

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

DAVID ROBERTS,  
CDCR #BA-0958,

Plaintiff,

vs.

CALIFORNIA STATE PRISON;  
ACUNA, Correctional Officer;  
CARUSO, Correctional Sergeant,

Defendants.

Case No.: 3:22-cv-01598-CAB-JLB

**ORDER DISMISSING CIVIL  
ACTION WITHOUT PREJUDICE  
FOR FAILING TO PAY  
FILING FEE REQUIRED  
BY 28 U.S.C. § 1914(a) AND/OR  
FAILING TO MOVE TO PROCEED  
IN FORMA PAUPERIS  
PURSUANT TO  
28 U.S.C. § 1915(a)**

Plaintiff David Roberts, proceeding pro se and while housed at the California State Prison, located in Represa, California, filed this civil rights action pursuant to 42 U.S.C. § 1983 on October 14, 2022. *See* Compl., ECF No. 1.

**I. Failure to Pay Filing Fee or Request IFP Status**

All parties instituting any civil action, suit or proceeding in a district court of the United States, except an application for writ of habeas corpus, must pay a filing fee of

\$402. *See* 28 U.S.C. § 1914(a).<sup>1</sup> An action may proceed despite a plaintiff's failure to prepay the entire fee only if he is granted leave to proceed IFP pursuant to 28 U.S.C. Section 1915(a). *See Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). However, if the Plaintiff is a prisoner, and even if he is granted leave to commence his suit IFP, he remains obligated to pay the entire filing fee in "increments," *see Williams v. Paramo*, 775 F.3d 1182, 1185 (9th Cir. 2015), regardless of whether his case is ultimately dismissed. *See* 28 U.S.C. § 1915(b)(1) & (2); *Taylor v. Delatoore*, 281 F.3d 844, 847 (9th Cir. 2002).

Plaintiff has not prepaid the \$402 in filing and administrative fees required to commence this civil action; nor has he submitted a properly supported Motion to Proceed IFP pursuant to 28 U.S.C. § 1915(a). Therefore, his case cannot yet proceed. *See* 28 U.S.C. § 1914(a); *Andrews*, 493 F.3d at 1051.

## **II. Conclusion and Order**

Accordingly, the Court:

(1) **DISMISSES** this civil action *sua sponte* without prejudice based on Plaintiff's failure to pay the \$402 civil filing and administrative fee or to submit a Motion to Proceed IFP pursuant to 28 U.S.C. § 1914(a) and § 1915(a); and

(2) **GRANTS** Plaintiff forty-five (45) days leave from the date this Order is filed to re-open his case by: (a) prepaying the entire \$402 civil filing and administrative fee in full; or (b) completing and filing a Motion to Proceed IFP which includes a certified copy of his CDCR trust account statement report for the 6-month period preceding the filing of his Complaint. *See* 28 U.S.C. § 1915(a)(2); S.D. Cal. Civ. L.R. 3.2(b).

---

<sup>1</sup> In addition to the \$350 statutory fee, civil litigants must pay an additional administrative fee of \$52. *See* 28 U.S.C. § 1914(a) (Judicial Conference Schedule of Fees, District Court Misc. Fee Schedule, § 14 (eff. Dec. 1, 2020)). The additional \$52 administrative fee does not apply to persons granted leave to proceed IFP. *Id.*

1       The Clerk of the Court is **DIRECTED** to provide Plaintiff with this Court's  
2 approved form "Motion and Declaration in Support of Motion to Proceed *In Forma*  
3 *Pauperis.*" But if Plaintiff fails to either prepay the \$402 civil filing fee or complete and  
4 submit the enclosed Motion to Proceed IFP within 45 days, this action will remain  
5 dismissed without prejudice based on his failure to satisfy 28 U.S.C. § 1914(a)'s fee  
6 requirements and without further Order of the Court.

7           **IT IS SO ORDERED.**

8

9 Dated: October 24, 2022

10

11 

---

Hon. Cathy Ann Bencivengo  
United States District Judge

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28